

State/Cnty SALE INSPECTION & CONTRACT ADMINISTRATION

Presale Inspection

It is recommended that, prior to starting a sale, a designated forester meet on site with the contractor to agree upon road layout, landing locations and other operational considerations. There should also be discussion to ensure there is a thorough understanding of the sale specifications. On County Forests, this will generally be a county forester unless delegated otherwise. A sample Timber Sale Contractor checklist (Form 2460-009) for the pre-sale meeting can be found in the Appendix A-23.

Scheduling Active Harvest Inspections

Personnel involved with timber sales on state or county properties will inspect active sales on a regular basis as operation of the sale dictates. County Forest timber sale inspection will normally be performed by the county forest staff. Where conditions warrant otherwise, the liaison forester and county forest administrator will jointly agree on who will make the inspections and schedule the inspections as the sales dictate. A DNR forester or technician will make a final inspection on all county sales to (1) record forest reconnaissance (recon) update information; and (2) to review outcome of silviculture recommendations for the sale.

Conduct of Inspection

The inspection will check for compliance with the contract. Documentation of the inspection is necessary for any legal action. The inspection will be documented on Form 2460-2 or similar County Form indicating date, what was inspected, any violations of contract, and any action taken. Any and all damages should be documented. Examples of such damages are as follows:

1. Loss of revenue - incomplete cut.
2. Growth loss.
3. Damage to residual.
4. Damage to other resources - water, soil, etc.
5. Cost of reselling uncut timber.
6. Cutting of unmarked trees or undesignated area.

State forest supervisors should inspect at least 10% of the sale acres established. The team supervisor should inspect at least 5% of the sales established on county and state land. These field inspections and office audits should evaluate (1) silvicultural prescriptions, (2) sale supervision, (3) administration, and (4) recordkeeping.

SEIZURE OF ILLEGALLY CUT PRODUCTS

All Department employees who will be administering or inspecting timber sales must be familiar with s. [26.05](#) (timber theft) and s. [26.06](#) (enforcement, seizure and sale of materials), Wis. Stats., to correctly do their job. Following is the procedure to use when an inspector finds illegally cut forest products on the sale being inspected.

The local district attorney or the Bureau of Legal Services should be contacted to discuss the proposed seizure to assure the seizure complies with the law.

If the inspector is not an employee authorized in s. [26.06\(1\)](#) to seize the products, an immediate contact should be made with an employee who is authorized. Once that person is on site, an attempt should be made to determine how much of the product is illegal and what the circumstances are concerning it.

The employee authorized in s. [26.06\(1\)](#) to seize the product should complete Form 4100-186, Seizure Notice, and attach it to the illegal product. There should be a minimum of one notice on each side of the pile of cut products. More can be added as deemed necessary by the officer. This form is not designed for prolonged exposure to rain or snow and should be checked on a regular basis until the product is disposed of. Replacements can be made as often as needed, but the date of the first notice should be used in all cases. If there is a need to replace a faded or worn notice, the original date should be entered along with a notation on the back of it that the notice **WAS RENEWED** with the replacement date. The original and any renewal forms should be removed and retained as a part of the officer's evidence case file until the issue is settled.

Any contractor involved should be contacted as soon as possible after the seizure and posting, advised of the action and the consequences of removal of the notice or product. A written record of all contacts should be prepared by all Department personnel involved in the incident. The property manager or sale administrator should be informed of the seizure as soon as possible. They should keep the inspector/seizing officer informed of any contacts, negotiations or arrangements regarding the product. If the seizure is made by a Bureau of Forestry employee, the team supervisor should be informed of the incident and all progress made toward a settlement.

State

CIVIL LIABILITY FOR UNAUTHORIZED CUTTING, REMOVAL OR TRANSPORTION OF RAW FOREST PRODUCTS

In addition to the forfeitures or other penalties or costs assessed under s. [26.05](#), Wis. Stats., and if liquidated damages under a contract with the Department don't suffice, damages should be pursued under s. [26.09](#), Wis. Stats., on Department lands. Consult and follow s. [26.09](#), Wis. Stats. for guidance.

Secure the assistance of a credentialed Forester Ranger, Ranger or Warden to assist in the investigation. Notify supervisor and Bureau of Legal Services.

Inform adjacent landowner or any other party involved that an investigation is ongoing.

- ◆ Retain close contact with DA if controversy is apparent or expected.

Conduct investigation and if necessary, obtain a certified survey to determine ownership of land from which timber was cut and /or transported. Document all portions of investigations on Case Activity Report (Form # 4100-160).

Determine when forest products were cut, by whom, the volume cut, and where marketed.

- ◆ Conduct appraisal of timber harvested.
 - Compare to adjacent stands, compartment recon and comparable sales.
 - Use LSFES, USFS Technical Note #507, 1957 *Diameter at breast height and stumpage diameter relationship* to help determine quantity of timber from stumps.
 - Determine stumpage value.
s. [26.09](#), Wis. Stats. defines stumpage value as those rates established by rule under s. [77.91\(1\)](#) OR the fair market value less the cost of harvesting, whichever is greater. This requires the forester to determine the stumpage rate, the fair market value, and the cost of harvesting
 - Stumpage values shall be derived from NR [46.30](#), Wis. Adm. Code.
 - Fair market value (FMV) shall be determined using the mill value where the forest products were hauled. If forest products have not been hauled, or, if mill is unknown, use comparable sale information and values from local mills.
 - Cost of harvesting includes the costs of cutting, removing or transporting the forest products. Costs shall be determined using local rates for similar equipment and labor, in similar terrain, and a comparable distance from the mill.

Determine whether “reasonable precautions” were taken per s. [26.09\(5\)](#), Wis. Stats. Consult with Bureau of Legal Services. *The DA is not involved in a civil damage claim however it would be appropriate to inform the DA if a theft case is also being pursued.

Determine “reasonable costs” under s. [26.09\(3\)\(d\)](#), Wis. Stats. DNR will customarily apply:

- 1) Determination of trespass & appraisal - DNR Staff time (see Individual Forest Fire Report Handbook, [4305.1](#) for wage rates) and expenses.
- 2) Line establishment – Costs associated with either a survey or an agreed upon harvest line established by parties.
- 3) Reforestation (if necessary) - charge for staff time & expenses, any contracting work (site prep, planting) and state nursery stock.
- 4) Repair of damages or “Cleanup”– Costs (staff time, equipment rental, expenses) associated with any DNR or contracted repair of damages resulting from timber theft.

Disputes of fact may arise from the Department's analysis of whether a person:

- ◆ “*reasonably* relied on a recorded survey ...”; or
 - ◆ took “reasonable precautions” in identifying harvesting boundaries;
- Questions may arise from the Department's calculation of “reasonable and necessary costs”. In such cases, settlement discussions may be worthwhile. Results of any such discussions shall be run through immediate supervisor and Bureau of Legal Services for approval.

Process Timber Sale Cutting Notice, Form [2460-001](#). Indicate circumstances under comment section. Remit resulting funds on timber sale transaction (Form [2460-003](#)) per Timber Sale Handbook.

Note: The Department cannot recover damages under *both* s. [26.09\(3\)\(b\) or \(c\)](#) and s. [26.06\(3\)](#), Wis. Stats. – which allows damages for twice the value of severed forest products. Additionally, the Department cannot recover damages under *both* s. [26.09\(3\)\(d\)3.](#) and s. [26.05\(3\)\(c\)](#), Wis. Stats. [Both sections provide for recovery of costs of determining the value or the volume of harvested timber.] Discuss with Bureau of Legal Services what alternative may best serve the Department on a case-by-case analysis.